* **HIGH COURT OF DELHI AT NEW DELHI**

+ Arb. P. No. 27/2007

Date of decision : 17th September, 2007

\# AMARJIT SINGH & ANR. ..... PETITIONERS.
! Through : Mr. Vineet Chadha, Advocate.

Versus

$ SMT. SOMWATI & ORS. ..... RESPONDENTS
^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J. (Oral)

1. Heard. Allowed.

2. This petition under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act") has been filed by the petitioner for appointment of an arbitrator to adjudicate the disputes existing inter se the parties within the meaning of Arbitration Agreement Clause 14 of the Agreement to Sell dated 15th February, 2005.

3. Petitioners in the present petition entered into an

Agreement to Sale dated 15th February, 2005 with deceased Ombir Singh in respect of residential plot No.AG-36, Shalimar Bagh, Delhi, measuring 263.25 sq. mtrs. which deceased Ombir Singh had purchased from Delhi Development Authority vide Perpetual Lease Deed dated 24th July, 1997 which was duly registered with the Sub-Registrar-VI, Delhi. Petitioners were handed over physical possession of the said property by deceased Ombir Singh after receiving total sale consideration of Rs.30,00,000/- and the impugned Agreement to Sell dated 15th February, 2005 was executed inter se the parties.

4. Certain disputes arose inter se the petitioners and the seller Ombir Singh now being represented by his legal heirs/respondents regarding enforcement of the Agreement to Sell. Ombir Singh died on 26th May, 2006.

5. The Agreement to Sell contained an arbitration clause i.e. Clause 14 which reads as follows:-

> "14. That in case any dispute arises between parties hereto, or their agents, representatives, nominees, assigns as regard the meaning and effect of this agreement or clauses or any other matter not specifically mentioned herein above, the same shall be referred to Arbitration, as provided

under the Indian Arbitration Act, then in force".

6. Since the dispute arose inter se the parties, petitioners served notice dated 19th October, 2006 upon the respondents, namely, legal heirs of deceased Ombir Singh invoking clause 14 of the Agreement to Sell dated 15th February, 2005 and called upon them to submit to Arbitration the disputes which have arisen between the parties.

7. However, in this notice, petitioners appointed Shri Debashish Moitra, Advocate having office at E-529, Greater Kailash-II, New Delhi-110048 as the sole arbitrator in the matter and requested respondents to agree to the appointment of the said arbitrator within the statutory period of 30 days. This notice was duly delivered to all the respondents as per the registered AD cards filed on the record. Respondents have failed to invoke the arbitration clause even after receipt of the notice as requested and appoint an arbitrator or agree to the appointment of Shri Debashish Moitra, Advocate as named by the petitioners.

8. The arbitration agreement is silent as to how an arbitrator has to be appointed. It means that arbitrator has to be appointed with the consensus of both the parties.

9. The petition has not been contested by respondents. There is a subsisting dispute referable to arbitration within the meaning of arbitration agreement. The court has to be satisfied of the existence of the conditions for the exercise of its power that arbitrator so appointed should be qualified arbitrator who would put to an end the disputes between the parties. The appointment of an arbitrator by the court in terms of section 11 (6) of the Act is based on the power so vested in the court from the statute which itself prescribe the conditions which stands exist to exercise that power and such a power is exercised by the court in its judicial authority.

10. The prayer of the petitioners in the petition is that the court may appoint an arbitrator in terms of Agreement dated 15th February, 2005 to adjudicate upon the disputes between the petitioners and the respondents No.1 to 6. Petitioners have not insisted upon the appointment of Shri Debashish Moitra, Advocate as the arbitrator in the present petition. Therefore, I hereby appoint Ms.Sunita Harish, Advocate, Chamber No.243, Lawyers Chamber, Delhi High Court, New Delhi as the sole arbitrator in this case. Fee of the arbitrator is fixed at Rs.20,000/- per hearing to be paid by the petitioners. However, arbitrator shall be entitled to claim

fees for 15 hearing in all.

11. Petition is accordingly allowed. Copy of this order be served upon the arbitrator as well as on the respondents. Copy of the order be given DASTI as well. File be consigned.

SEPTEMBER 17, 2007 **ARUNA SURESH**
vk **(JUDGE)**